

Message

**From:** Hurlid, Kathy [Hurlid.Kathy@epa.gov]  
**Sent:** 11/2/2018 3:55:11 PM  
**To:** Hicks, Matt [Hicks.Matthew@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]  
**Subject:** Re: Follow-ups on two Florida documents

Simma left you a voicemail about state waters vs state-assumed and retained waters.

I am open to other suggestions, Matt, Rosemary and I were trying to come up with a term that captured

## Ex. 5 Deliberative Process (DP)

- kathy

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**From:** Hicks, Matt  
**Sent:** Friday, November 2, 2018 11:44 AM  
**To:** Kupchan, Simma; Calli, Rosemary; Hurlid, Kathy  
**Subject:** RE: Follow-ups on two Florida documents

Thanks Simma. Just checking in but signing off for the afternoon. Please call me on my cell at [REDACTED] if David gives us the green light or if he has more follow-up that I can help with.

Ex. 6 Personal Privacy (PP)

Thanks,

Matt

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**From:** Kupchan, Simma  
**Sent:** Friday, November 2, 2018 10:38 AM  
**To:** Hicks, Matt <Hicks.Matthew@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>  
**Subject:** RE: Follow-ups on two Florida documents

Thanks, guys. Very helpful. I will let you know what David says as soon as I hear from him.

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

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**From:** Hicks, Matt  
**Sent:** Thursday, November 1, 2018 5:58 PM  
**To:** Calli, Rosemary <Calli.Rosemary@epa.govmailto:Calli.Rosemary@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.govmailto:Kupchan.Simma@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.govmailto:Hurlid.Kathy@epa.gov>  
**Subject:** RE: Follow-ups on two Florida documents

I agree with Rosemary and don't need to run this by my management since this is a programmatic call.

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**From:** Calli, Rosemary  
**Sent:** Thursday, November 1, 2018 5:54 PM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.govmailto:Kupchan.Simma@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.govmailto:Hicks.Matthew@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.govmailto:Hurlid.Kathy@epa.gov>  
**Subject:** RE: Follow-ups on two Florida documents

## Ex. 5 Deliberative Process (DP)

From: Kupchan, Simma  
Sent: Thursday, November 1, 2018 5:18 PM  
To: Calli, Rosemary <Calli.Rosemary@epa.govmailto:Calli.Rosemary@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.govmailto:Hicks.Matthew@epa.gov>; Hurl, Kathy <Hurl.Kathy@epa.govmailto:Hurl.Kathy@epa.gov>  
Subject: FW: Follow-ups on two Florida documents

I will tell him we

## Ex. 5 Deliberative Process (DP)

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

From: Fotouhi, David  
Sent: Thursday, November 1, 2018 5:16 PM  
To: Kupchan, Simma <Kupchan.Simma@epa.govmailto:Kupchan.Simma@epa.gov>  
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.govmailto:Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.govmailto:Wehling.Carrie@epa.gov>  
Subject: RE: Follow-ups on two Florida documents

## Ex. 5 AC/DP

David Fotouhi

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
fotouhi.david@epa.govmailto:fotouhi.david@epa.gov

From: Kupchan, Simma  
Sent: Thursday, November 1, 2018 4:02 PM  
To: Fotouhi, David <Fotouhi.David@epa.govmailto:Fotouhi.David@epa.gov>  
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.govmailto:Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.govmailto:Wehling.Carrie@epa.gov>  
Subject: Follow-ups on two Florida documents

David,

Thank you very much for your input on the proposed changes to FL's rules. R4 will incorporate all of your proposed edits, but just wanted to propose one alternative edit to the "material permit modification" paragraph, in response to a question you raised. Please see below.

Stakeholder-proposed language:

## Ex. 5 Deliberative Process (DP)

David asked:

## Ex. 5 AC/DP

# Ex. 5 AC/DP

New proposed language:

## Ex. 5 Deliberative Process (DP)

Could you please let us know if you are comfortable with R4's revised proposed approach, or if you have concerns about it? Thank you very much for your continued attention to this matter.

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

From: Fotouhi, David  
Sent: Tuesday, October 30, 2018 7:30 PM  
To: Palmer, Leif <Palmer.Leif@epa.gov<mailto:Palmer.Leif@epa.gov>>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov<mailto:Leopold.Matt@epa.gov>>  
Cc: Glenn, Trey <Glenn.Trey@epa.gov<mailto:Glenn.Trey@epa.gov>>; Walker, Mary <walker.mary@epa.gov<mailto:walker.mary@epa.gov>>; Ashbee, Blake <ashbee.blake@epa.gov<mailto:ashbee.blake@epa.gov>>; Jenkins, Brandi <Jenkins.Brandi@epa.gov<mailto:Jenkins.Brandi@epa.gov>>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov<mailto:Gettle.Jeaneanne@epa.gov>>; Hicks, Matt <Hicks.Matthew@epa.gov<mailto:Hicks.Matthew@epa.gov>>; Neugeboren, Steven <Neugeboren.Steven@epa.gov<mailto:Neugeboren.Steven@epa.gov>>; Kupchan, Simma <Kupchan.Simma@epa.gov<mailto:Kupchan.Simma@epa.gov>>; McGill, Thomas <Mcgill.Thomas@epa.gov<mailto:Mcgill.Thomas@epa.gov>>; Zapata, Cesar <Zapata.Cesar@epa.gov<mailto:Zapata.Cesar@epa.gov>>; Wade, Alexis <Wade.Alexis@epa.gov<mailto:Wade.Alexis@epa.gov>>; Ghosh, Mita <Ghosh.Mita@epa.gov<mailto:Ghosh.Mita@epa.gov>>  
Subject: RE: proposed responses to FDEP's assumption questions

My comments and suggestions are tracked in the attached document. Please let me know if you would like to discuss.

Best,

David

David Fotouhi

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
fotouhi.david@epa.gov<mailto:fotouhi.david@epa.gov>

From: Palmer, Leif  
Sent: Thursday, October 25, 2018 7:02 PM  
To: Fotouhi, David <Fotouhi.David@epa.gov<mailto:Fotouhi.David@epa.gov>>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov<mailto:Leopold.Matt@epa.gov>>  
Cc: Glenn, Trey <Glenn.Trey@epa.gov<mailto:Glenn.Trey@epa.gov>>; Walker, Mary <walker.mary@epa.gov<mailto:walker.mary@epa.gov>>; Ashbee, Blake <ashbee.blake@epa.gov<mailto:ashbee.blake@epa.gov>>; Jenkins, Brandi <Jenkins.Brandi@epa.gov<mailto:Jenkins.Brandi@epa.gov>>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov<mailto:Gettle.Jeaneanne@epa.gov>>; Hicks, Matt <Hicks.Matthew@epa.gov<mailto:Hicks.Matthew@epa.gov>>; Neugeboren, Steven

<Neugeboren.Steven@epa.gov<mailto:Neugeboren.Steven@epa.gov>>; Kupchan, Simma  
<Kupchan.Simma@epa.gov<mailto:Kupchan.Simma@epa.gov>>; McGill, Thomas  
<McGill.Thomas@epa.gov<mailto:McGill.Thomas@epa.gov>>; Zapata, Cesar  
<Zapata.Cesar@epa.gov<mailto:Zapata.Cesar@epa.gov>>; Wade, Alexis  
<Wade.Alexis@epa.gov<mailto:Wade.Alexis@epa.gov>>; Ghosh, Mita  
<Ghosh.Mita@epa.gov<mailto:Ghosh.Mita@epa.gov>>  
Subject: FW: proposed responses to FDEP's assumption questions  
Importance: High

Matt & David – as mentioned on today's OGC call we've worked out responses to FDEP's latest questions. Trey asked me to forward this to you for your thoughts.

Matt Hicks' email below provides context.

Leif Palmer  
Regional Counsel  
US EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303  
(404) 562-9542  
Ex. 6 Personal Privacy (PP) (cell)

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

From: Hicks, Matt  
Sent: Tuesday, October 23, 2018 5:51 PM  
To: Palmer, Leif <Palmer.Leif@epa.gov<mailto:Palmer.Leif@epa.gov>>  
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov<mailto:Ghosh.Mita@epa.gov>>  
Subject: FW: proposed responses to FDEP's assumption questions  
Importance: High

Leif,

Here's EPA's proposed response to the two recent questions we received from DEP on Friday. These proposed responses were generated by the Region 4 team (Tom McGill level) after consulting with Simma (both issues) and Alexis (mitigation issue only) at OGC. DEP is waiting to hear from us before moving forward with their rulemaking so time is of the essence. More internal discussion is needed on the issue of incorporating retained waters list into EPA's Federal Register notice approving the state's program but that issue is not as time critical as the two below.

**Ex. 5 AC/DP**

Please call me if you'd like to discuss further.

Thanks,

Matt

From: McGill, Thomas  
Sent: Tuesday, October 23, 2018 5:10 PM  
To: Zapata, Cesar <Zapata.Cesar@epa.gov<mailto:Zapata.Cesar@epa.gov>>  
Cc: Calli, Rosemary <Calli.Rosemary@epa.gov<mailto:Calli.Rosemary@epa.gov>>; Purify, Johnnie  
<Purify.Johnnie@epa.gov<mailto:Purify.Johnnie@epa.gov>>; Hicks, Matt  
<Hicks.Matthew@epa.gov<mailto:Hicks.Matthew@epa.gov>>; Ghosh, Mita

<Ghosh.Mita@epa.gov<mailto:Ghosh.Mita@epa.gov>>; Kupchan, Simma  
<Kupchan.Simma@epa.gov<mailto:Kupchan.Simma@epa.gov>>; Hurlb, Kathy  
<Hurlb.Kathy@epa.gov<mailto:Hurlb.Kathy@epa.gov>>; Allenbach, Becky  
<Allenbach.Becky@epa.gov<mailto:Allenbach.Becky@epa.gov>>; Nagrani, Kavita  
<Nagrani.Kavita@epa.gov<mailto:Nagrani.Kavita@epa.gov>>; Laycock, Kelly  
<Laycock.Kelly@epa.gov<mailto:Laycock.Kelly@epa.gov>>; Parker, Christopher  
<Parker.Christopher@epa.gov<mailto:Parker.Christopher@epa.gov>>  
Subject: proposed responses to FDEP's assumption questions  
Importance: High

Cesar,

As a follow-up to our conversation yesterday, FDEP would appreciate EPA's quick feedback on questions they asked during calls held with some of EPA's assumption team members on Oct 19 and 22nd. You'll recall that I forwarded you an email from Matt Hicks on Oct 19 regarding their basic questions, and we received additional clarification with FDEP staff in a call held on Oct 22. We understand that FDEP is awaiting EPA's feedback prior to proceeding with their Notice of Proposed Rulemaking and that FDEP would prefer EPA's feedback through a conversation instead of in writing.

Attached is a document drafted by the EPA Assumption Team that includes: (1) FDEP's questions (highlighted in blue text); (2) proposed EPA responses (highlighted in yellow text); and (3) other information to provide background/context for FDEP's questions and/or the proposed responses. We would appreciate feedback from the RA and the senior leaders at OGC/OW as quickly as they can provide it before responding to FDEP.

If you have any questions or need any additional information please let us know.

Thanks.

Tom